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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* DONALD F. GORDON, SADIK BAYRAKERI, HAROLD P.  
YOCOM, and JERRY WANG

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Appeal 2010-008762  
Application 09/585,263  
Technology Center 2400

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Before JOSEPH F. RUGGIERO, ROBERT E. NAPPI, and BRADLEY W.  
BAUMEISTER, *Administrative Patent Judges*.

NAPPI, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) of the rejection of claims 1, 5, 7 through 10, 13 and 14. Claims 2 through 4, 6, 11 and 12 have been canceled.<sup>1</sup>

We affirm.

## INVENTION

The invention is directed a method for transmitting an interactive program guide to a set top box. *See* Specification 2-3. Claim 1 is representative of the invention and reproduced below:

1. A method, comprising:
  - generating, at a headend, at least one bitmap for a channel information window;
  - encoding, at the headend, a broadcast video presentation and the bitmap for the channel information window, the broadcast video presentation being programming from one of a plurality of channels;
  - transmitting, from the headend to a set top terminal, the broadcast video presentation and the bitmap for the channel information window wherein elements on a display screen can be selectively masked and displayed;
  - receiving, at the set top terminal, a signal to activate the channel information window;
  - decoding, at the set top terminal, the broadcast video presentation and the bitmap for the channel information window; and
  - compositing, at the set top terminal, the bitmap for the channel information window and the broadcast video presentation to produce a video stream for a display so that the channel information window overlays and obscures at least a portion of the broadcast video

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<sup>1</sup> Appellants' statement regarding the status of the claims, on page 2 of the Brief appears to be in error as claims 2 through 4, 6, 11, and 12 have been canceled (see claims appendix) and we can find no record of claims 15 through 24 being presented in this application.

presentation on the display wherein transmitting the bitmap for the channel information window is performed via an out-of-band channel.

#### REFERENCE

Hoarty	5,485,197	Jan. 16, 1996
Hendricks	5,559,549	Sep. 24, 1996
Miller	5,585,866	Dec. 17, 1996
Bolanos	5,793,364	Aug. 11, 1998
MacInnis	5,951,639	Sep. 14, 1999
Gordon	6,208,335 B1	Mar. 27, 2001

#### REJECTION AT ISSUE

The Examiner has rejected claim 1 under 35 U.S.C. § 103(a) as being obvious over Hendricks in view of Gordon. Answer 3-5.<sup>2</sup>

The Examiner has rejected claims 5 and 8 under 35 U.S.C. § 103(a) as being obvious over Hendricks in view of Gordon and Miller. Answer 5-8.

The Examiner has rejected claim 7 under 35 U.S.C. § 103(a) as being obvious over Hendricks in view of Gordon, Miller and Hoarty. Answer 8-9.

The Examiner has rejected claims 9, 10, and 13 under 35 U.S.C. § 103(a) as being obvious over Hendricks in view of Gordon and Bolanos. Answer 9-13.

The Examiner has rejected claim 14 under 35 U.S.C. § 103(a) as being obvious over Hendricks in view of Gordon and MacInnis. Answer 13.

## ISSUES

### *Claim 1*

Appellants argue on pages 8 through 11 of the Brief<sup>3</sup> and pages 2 and 3 of the Reply Brief that the Examiner's rejection of claim 1 is in error as Hendricks teaches that the set top box generates the channel information window. These arguments present us with the issue: did the Examiner error in finding that the combination of Hendricks and Gordon teaches encoding at the headend and decoding at the set top box, the channel information window?

### *Claim 5*

Appellants argue on pages 8 through 13 of the Brief that the Examiner's rejection of claim 5 is in error. These arguments present us with the same issue discussed above with respect to claim 1 and the additional issue of whether the further teachings of Miller make up for the deficiencies noted with respect to the rejection of claim 1?

### *Claim 7*

Appellants argue on pages 13 through 14 of the Brief that the Examiner's rejection of claim 7 is in error. These arguments present us with the same issue discussed above with respect to claim 5 and the additional issue of whether Hoarty teaches changing a display to a new broadcast video display on termination of the navigation command?

### *Claims 9 and 10*

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<sup>2</sup> Throughout this opinion we refer to the Examiner's Answer mailed on April 13, 2010.

<sup>3</sup> Throughout this opinion we refer to the Appeal Brief dated January 11, 2010 and Reply Brief dated May 18, 2010.

Appellants argue on pages 14 through 16 of the Brief that the Examiner's rejection of claims 9 and 10 are in error. These arguments present us with the same issue discussed above with respect to claim 1 and the additional issue of whether the further disclosure of Bolanos teaches receiving at the headend from the terminal, a signal to activate the channel information window?

*Claim 13*

Appellants' arguments on pages 16 and 17 of the Brief directed to the rejection of claim 13 present us with the same issue as identified above with respect to claims 9 and 10.

*Claim 14*

Appellants argue on page 17 of the Brief that the Examiner's rejection of claim 14 is in error. These arguments present us with the issue, did the Examiner error in finding that the combination of Hendricks, Gordon and MacInnis teaches continually broadcasting the bitmap for the channel information window?

## ANALYSIS

*Claim 1*

We have reviewed the Examiner's rejection in light of Appellants' arguments that the Examiner has erred. We disagree with Appellants' conclusion that the Examiner has erred in finding that the combination of Hendricks and Gordon teaches encoding at the headend and decoding at the set top box, the channel information window. We adopt as our own (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken and (2) the reasons set forth by the Examiner in the

Examiner's Answer in response to Appellants' Appeal Brief. We concur with the conclusion reached by the Examiner.

The Examiner finds that Hendricks teaches that the headend generates and encodes (signal compression) graphic files for transmission to a receiver (the claimed set top box). Answer 15. Further, the Examiner finds that Hendricks also teaches that the receiver (set top box) receives these transmissions, to generate screen menus to be displayed. Answer 15-16. The Examiner notes that the graphics files are bitmaps but relies upon Gordon to teach that graphics are downloaded as bitmap files. Answer 4-5. We concur with these findings by the Examiner as they are supported by ample evidence.

Underlying the Examiner's conclusion that the claim is obvious over the combination of these references, is an interpretation of the claim encompassing a system where the generated (encoded and transmitted) bitmap for a channel information window is a portion of the information displayed overlaying the broadcast video presentation. See for instance Examiner's finding that information is assembled into a menu at the set top box. Answer 15. In contrast, Appellants' arguments imply an interpretation of claim 1 requiring that all of the information displayed in the bit map channel information window. See for instance, Appellants' argument that the set top box has to generate the bitmap. Brief 9 and 10. We do not find that claim 1 recites a limitation directed to the bitmap of the channel information window (generated, encoded and transmitted by the headend and decoded and composited at the set top terminal) containing all of the information displayed overlaying the broadcast video presentation. Nor do we find that interpreting the claim in light of Appellants' Specification

necessarily requires such an interpretation. Appellants' Specification identifies that some of the common graphics, such as backgrounds, logos and icons, may be stored in the set top box, i.e. graphics displayed as part of the overlay information are not generated, encoded and transmitted as claimed. Specification 34, ll. 20-25. Thus, Appellants have not persuaded us of error in the Examiner's rejection of claim 1 as the features which Appellants assert define the invention over the art are not present in claim 1. Accordingly, we sustain the Examiner's rejection of claim 1.

*Claim 5*

As discussed above, Appellants' arguments directed to claim 5 present us with the same issue as with claim 1 and the additional issue of whether the teachings of Miller remedy the alleged deficiency in the rejection of claim 1. The Examiner in rejecting claim 5 uses similar rationale as with claim 1. Answer 5-8, 17. As with claim 1, we do not find that claim 5 recites a limitation that the bitmaps of the channel information window (generated, encoded and transmitted by the headend and decoded and composited at the set top terminal) contain all of the information displayed overlaying the broadcast video presentation. Accordingly, for the reasons discussed with respect to claim 1, Appellants have not persuaded us of error in the rejection of claim 5.

*Claim 7*

Appellants' arguments have not persuaded us of error in the Examiner's rejection of claim 7. In response to Appellants' arguments, the Examiner agrees that Hoarty does not teach changing a display to a new broadcast video display on termination of the navigation command as claimed, but rather finds that Miller teaches this feature. Appellants have



not addressed this finding by the Examiner. Thus, Appellants have not persuaded us of error in the rejection of claim 7 as Appellants have not identified an error in the rejection. Accordingly, we sustain the Examiner's rejection of claim 7.

*Claims 9, 10, and 13*

As discussed above, Appellants' arguments directed to claims 9 and 10 present us with the same issue as with claim 1 and the additional issue of whether the teachings of Bolanos remedy the alleged deficiency in the rejection of claim 1. The Examiner, in rejecting claim 5 uses similar rationale as with claim 1. Answer, 17 and 18. As with claim 1, we find that claims 9 and 10 do not recite a limitation that the bitmaps of the channel information windows contain all of the information displayed overlaying the broadcast video presentation. Accordingly, for the reasons discussed with respect to claim 1, Appellants' first argument has not persuaded us of error in the rejection of claims 9 and 10.

With respect to Appellants' second argument, we disagree with Appellants' conclusion that the Examiner has erred in finding that the combination of Hendricks, Gordon and Bolanos teaches receiving at the headend from the terminal, a signal to activate the channel information window. We adopt as our own (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken and (2) the reasons set forth by the Examiner in the Examiner's Answer in response to Appellants' Appeal Brief. We concur with the conclusion reached by the Examiner.

Specifically, Appellants argue that the graphics downloaded from the headend in response to a signal from the set top box discussed in Bolanos

relates to playback of audiovisual programs and is not a program guide overlaid over a video as claimed. Brief 16. Initially, we note that this argument seeks to define the claim over the prior art based upon the type of data downloaded and displayed. The claim does not recite a functional relationship between the type of data and the claimed method. As such the differences between the claimed data and that taught by the prior art will not differentiate the invention from the prior art.<sup>4</sup> Nonetheless, the Examiner has found that the interface in Bolanos is analogous to the program guide interface taught by Hendricks and it was obvious to combine the teachings. Answer 11, 12, and 19. We concur with these findings by the Examiner. Accordingly, we sustain the Examiner's rejection of claims 9 and 10. As Appellants' arguments directed to the rejection of claim 13 present the same issues, we similarly sustain the Examiner's rejection of claim 13.

*Claim 14*

We disagree with Appellants' conclusion that the Examiner has erred in finding that the combination of Hendricks, Gordon and Bolanos teaches receiving at the headend from the terminal, a signal to activate the channel information window. We adopt as our own (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken and (2) the reasons set forth by the Examiner in the Examiner's Answer in response to Appellants' Appeal Brief. We concur with the conclusion reached by the Examiner.

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<sup>4</sup> The Examiner need not give patentable weight to descriptive material absent a new and unobvious functional relationship between the descriptive material and the substrate. *See In re Lowry*, 32 F.3d 1579, 1583-84 (Fed.

Footnote continued on next page.

Appellants argue that MacInnis teaches only broadcasting a portion of the data continuously. Brief 17. We are not persuaded by this argument; the Examiner finds that MacInnis teaches downloading all of the claimed data. Answer 19-20. As with claim 1, Appellants' arguments are directed to the bitmap of the channel information window containing all of the information displayed overlaying the broadcast video presentation. We do not consider claim 14 to be so limited. Accordingly we are not persuaded of error by Appellants' argument as the features which Appellants assert define the invention over the art are not present in claim 14. Accordingly, we sustain the Examiner's rejection of claim 14.

#### ORDER

The decision of the Examiner to reject claims 1, 5, 7 through 10, 13 and 14 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

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Cir. 1994); *In re Ngai*, 367 F.3d 1336, 1338 (Fed. Cir. 2004) and our decision in *Ex parte Curry*, 2005-0509 (BPAI 2005), 84 USPQ2d 1272.